

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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LEE ANN SPUND,
Tenant/Petitioner

v.

QDC PROPERTY MANAGEMENT,
Housing Provider/Respondent

Case No.: RH-TP-06-28643

FINAL ORDER

I. Introduction

On June 6, 2006, Tenant/Petitioner Lee Ann Spund filed tenant petition (“TP”) 28,643 with the Rental Accommodations and Conversion Division of the District of Columbia Department of Consumer and Regulatory Affairs (“RACD”) alleging violations of the Rental Housing Act of 1985 (the “Act”) with respect to her housing accommodation at 2130 P Street, N.W., Unit No. 706. Tenant and Housing Provider/Respondent, QDC Property Management, appeared at a hearing on February 6, 2007, during which the parties presented testimony and submitted documentary evidence.¹ As set forth below, I find that Tenant has proven that Housing Provider implemented illegal increases in 2004 and 2005 and that Tenant is entitled to an exemption from a capital improvement surcharge as of September, 2006. I award rent refunds and interest totaling \$1,539.34.

¹ Although the hearing was intended to be recorded on the OAH’s digital FTR Reporter system, no file for the hearing could be located in the FTR folder. It is unclear whether the hearing was mistakenly not recorded or whether the recording was accidentally deleted. The decision here is based on the judge’s notes and the 43 exhibits that were admitted into evidence.

II. Analysis of the Evidence

A. Background

Tenant, Lee Ann Spund, has been a resident of apartment No. 706 at 2130 P Street, N.W., the housing accommodation, since 1983. Respondent's Exhibit ("RX") 221.² In the three years before Tenant filed her tenant petition, Housing Provider imposed four rent increases, increasing the rent on her apartment from \$887 per month in February, 2003 (RX 217) to \$980 per month in March, 2006. Petitioner's Exhibit ("PX") 117. The rent increases were imposed annually, effective in March or April. The 2003 increase, effective April 1 of that year, was attributed to a capital improvement surcharge of \$28 per month. The remaining increases in 2004, 2005, and 2006, were attributed to the annual cost-of living increase based on the CPI-W, published annually by the Rental Housing Commission.³ The CPI-W increases taken by Housing Provider in these years were not those most recently promulgated by the Rental Housing Commission relating to the previous year. Instead, Housing Provider implemented increases in the rent ceiling arising from CPI-W increases that purportedly had been taken and perfected in earlier

² A table of the exhibits received in evidence at the hearing is set forth in the appendix to this Final Order.

³

The application of the CPI-W increase, or the adjustment of general applicability, was described by the District of Columbia Court of Appeals as follows: "The adjustment of general applicability allows housing providers the option to increase rent ceilings annually in order to keep up with inflation. The adjustment 'shall be equal to the change during the previous calendar year, ending each December 31, in the Washington, D.C. Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items during the preceding calendar year,' subject to a cap of ten percent. D.C. Code § 42-3502.06(b). It is the RHC's duty to determine the amount of the general applicability adjustment annually and publish it by March 1 of each year. *See id.* and D.C. Code § 42-3502.02(a)(3). The adjustment is published annually in the D.C. Register with an effective date of May 1." *Sawyer Prop. Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 104 (D.C. 2005) (footnotes omitted).

years — 1999 CPI-W (2004 rent increase), 1998 CPI-W (2005 rent increase); and 2004 CPI-W (2006 rent increase).

In 1998 Ms. Spund was badly burned in a fire and was hospitalized. She testified that ever since then she has been “sick all the time.” In March 2004 she applied for Social Security disability benefits and was diagnosed to have “major depression” by an examining physician, who noted that her prognosis was “poor.” Petitioner's Exhibit ("PX") 104. On August 16, 2004, the Social Security Administration informed Ms. Spund that she was eligible to receive Supplemental Security Income payments for disability as of November 14, 2003. PX 105. Ms. Spund continued to receive disability payments through the date of the hearing. PXs 104 – 110.

Although the Social Security Administration confirmed Ms. Spund’s disability rating in August, 2004, she did not apply to the RACD for a disability exemption from the capital improvement surcharge until June 19, 2006. PX 111. The RACD determined that she was disabled as of August 12, 2006. PX 111. Ms. Spund testified that she did not seek a determination of her condition earlier because she was depressed.

In October, 1991, the RACD issued a decision and order authorizing Housing Provider to impose a rent ceiling surcharge of up to \$55 per month to cover the cost of capital improvements to Tenant’s building. RX 206. The building tenants organized a tenant association to contest the surcharge. Ms. Spund authorized the tenant association to act on her behalf. RX 207. In December 2001 the tenant association entered into a settlement agreement with Housing Provider under which Housing Provider would implement the surcharge in two parts. Beginning on March 1, 2002, Housing Provider would impose a \$27 per month surcharge. The full \$55 per month surcharge would not begin until March 1, 2003. RX 208.

On January 17, 2002, Tenant signed a document approving the settlement. The document confirmed that Tenant's rent ceiling at that time was \$875 per month, not including the \$55 per month capital improvement surcharge. RX 209.

B. The Tenant Petition

On June 6, 2006, Tenant filed TP 28,643 with the Rent Administrator. The petition alleged that: (1) The rent increase was larger than the amount of increase allowed under the Rental Housing Act. (2) Housing Provider failed to file the proper rent increase forms with the RACD. (3) The rent being charged exceeded the legally calculated rent ceiling for the unit. Specifically, Tenant noted in the petition that: (1) the May 1998 rent increase was \$10 over the legal limit; it was \$25 when it should have been \$15; and (2) there was no rent ceiling increase on record at the RACD for the May 2004 rent increase.

On December 8, 2006, shortly before a scheduled hearing on December 21, Tenant moved to amend her tenant petition to add the following issues: (1) Tenant should not be assessed the capital improvement surcharge because she was disabled; (2) the rent increases from 2003 to 2006 were improper due to incorrect calculation of the rent ceiling; (3) the RACD had no record of the May 2004 rent increase. Housing Provider opposed the amendment on the grounds that it was prejudiced in light of the short time remaining before the hearing. I granted Tenant's motion and continued the hearing to allow Housing Provider adequate time to prepare a defense to the new issues.⁴

⁴ All of the issues raised in the amended petition were arguably encompassed in the issues that were described in the original tenant petition. The amended petition made specific reference to the 2003 – 2006 rent increases and to the capital improvement surcharge.

The hearing went forward on February 6, 2007. Tenant appeared and testified on her own behalf. Housing Provider was represented by counsel who presented testimony from two witnesses, Amy LeFaivre-Dolan, an employee, and Gene Santomartino, a contractor for Housing Provider. Tenant, whose first language is Korean, requested the services of an interpreter which was arranged by a telephone connection. But Tenant testified in English, using the interpreter's service only when she did not understand a question or had trouble articulating an answer in English.

C. Tenant's Claim that the 2004, 2005, and 2006 Rent Increases Were Improper

Tenant contested the three rent increases that Housing Provider implemented between April 2004 and March 2006. One of the bases for this complaint was that she was disabled, an issue that I discuss in Section D below. But she also testified that the rent increases were not "legitimate" and she stated in her petition that Housing Provider failed to file the proper rent increase forms and charged rents that exceeded the legal rent ceiling.

Ms. Spund's testimony concerning the specific failings of Housing Provider's 2004, 2005, and 2006 rent increases was vague. She did not articulate any particular improprieties concerning her rent increases other than a belief that she was entitled to relief on account of her disability. One of Housing Provider's witnesses, Gene Santomartino, identified the documents on file with the RACD that supported Housing Provider's rent increases and described how each of the rent increases was computed. Mr. Santomartino, a computer consultant, employed software to track the rent and rent ceiling increases in each of the apartments in Tenant's building and select the rent ceiling increases that had been taken and perfected previously and were available to be implemented as rent increases. In addition, Housing Provider introduced an

affidavit by Allison Law, an employee of Housing Provider who processed notices of rent increases and submitted filings to the Rent Administrator relating to Tenant's building.

Housing Provider's Notices of Increase in Rent Charged, RXs 217, 218, document the following rent increases for Tenant between April, 2003, and March, 2006:

Table 1
Tenant's Rent Increases, 2003 - 2006

| Date of Notice | Prior Rent | New Rent | Amount of Increase | Effective Date | Justification for Increase |
|----------------|------------|----------|--------------------|----------------|-------------------------------|
| 2/28/03 | \$887 | \$915 | \$28 | 4/1/03 | Capital Improvement Surcharge |
| 2/27/04 | \$915 | \$938 | \$23 | 4/1/04 | 1999 CPI-W |
| 2/28/05 | \$938 | \$953 | \$15 | 4/1/05 | 1998 CPI-W |
| 1/26/06 | \$953 | \$980 | \$27 | 3/1/06 | 2004 CPI-W |

1. The 2003 Rent Increase

The 2003 rent increase arose from the implementation of the second part of the capital improvement surcharge under a settlement between Housing Provider and the building tenants' association. The surcharge was agreed to in the Settlement Agreement executed by the association and ratified by Ms. Spund. RXs 208, 209. In addition, Ms. Spund's challenge to this increase is barred by the Rental Housing Act's three-year statute of limitations, D.C. Official

Code § 42-3502.06(e).⁵ Accordingly, I find that Tenant has not proved that her 2003 rent increase was improper.

2. The 2004 Rent Increase

The April 2004 rent increase was attributed to a CPI-W adjustment of 2.6% authorized as of May 1, 2002, in the amount of \$23. RX 217. In order to implement such an adjustment, Housing Provider must use an adjustment that was properly taken and perfected. *Sawyer Prop. Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 104 (2005). The evidence here shows that Housing Provider's 2002 CPI-W adjustment was not properly taken and perfected.

RACD regulations require that a Housing Provider file a Certificate of Election of Adjustment of General Applicability within 30 days of when the Housing Provider is first eligible to take the adjustment. 14 DCMR 4204.10(c). *Sawyer*, 877 A.2d at 104. The Certificate of Election of Adjustment of General Applicability submitted into evidence by Housing Provider here, RX 216, was not filed until October 8, 2002, although the effective date of May 1, 2002, is shown both on the certificate and on Tenant's 2004 Notice of Increase in Rent Charged, RX 217. Because the 2002 CPI-W increase in Tenant's rent ceiling was not properly taken and perfected, the 2004 rent increase based on that increase is invalid. Therefore I will award Tenant a rent refund of \$23 per month beginning April 1, 2004.⁶ Because I find that

⁵ D.C. Official Code § 42-3502.06(e) provides in part: "No petition may be filed with respect to any Rent Administrator under any section of this chapter, more than 3 years after the effective date of the adjustment" Tenant's 2003 rent increase, effective April 1, 2003, was implemented more than three years before she filed her tenant petition on June 6, 2006.

⁶ The Rental Housing Act provides that the penalty for a housing provider's improper increase of the rent ceiling is a reduction in the rent ceiling which, in turn, will require a refund if the rent ceiling exceeds the rent charged. D.C. Official Code § 42-3509.01. But a rent increase that implements a rent ceiling adjustment that was not properly taken and perfected is subject to refund irrespective of whether the rent charged exceeds the rent ceiling. *Sawyer Prop Mgmt. v.*

Housing Provider's 2004 rent increase was improper, I do not reach Tenant's argument that Housing Provider had previously implemented a portion of the 1998 CPI-W rent ceiling adjustment.

3. The 2005 Rent Increase

Housing Provider attributed Tenant's April, 2005 rent increase of \$15 to an increase in the rent ceiling of 1.8% arising out of the CPI-W increase that was effective May 1, 1998. RX 217. The applicable Certificate of Election of Adjustment of General Applicability was filed with the Rent Administrator on January 7, 1999, referencing a rent ceiling increase of 1.8% for the 1998 CPI-W. RX 214. The effective date on the certificate is stated to be "2/99." On the Notice of Increase in Rent Charged it is stated to be "5/1/1998." Because the certificate was filed within 30 days of the "effective date" of "2/99," stated in the certificate, the filing was timely on its face.

The problem with Housing Provider's January 1999 filing is that the effective date stated in the certificate is not the effective date promulgated by the Rental Housing Commission. The 1.8% CPI-W implemented in Tenant's 2005 Notice of Increase in Rent Charged arose out of the CPI-W for calendar year 1997. It was published in the District of Columbia Register on February 27, 1998, "to become effective on May 1, 1998." 45 D.C. Reg. 1142 (Feb. 27, 1998).⁷ Thus, Housing Provider's certificate was in fact filed more than seven months after the effective date of the rent ceiling increase it purported to take and perfect.

Mitchell, TP 24,991 (RHC May 29, 2002), at 7-8, 23-24, *aff'd*, *sub nom Sawyer Prop. Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 101-02 (2005).

⁷ The increase arising out of the CPI-W for calendar year 1998 was only 1.0% and was not published in the District of Columbia Register until February 26, 1999, effective May 1, 1999. 46 D.C. Reg. 2263 (Feb. 26, 1999).

The rent ceiling increase was not timely filed and the subsequent rent increase is thus improper. Therefore I will award Tenant a rent refund of \$15 per month beginning April 1, 2005.

4. The 2006 Rent Increase

The final rent increase at issue in this case is a \$27 per month increase imposed in a Notice of Increase in Rent Charged dated January 26, 2006, effective March 1, 2006. The rent increase was attributed to a CPI-W increase effective on May 1, 2004. PX 117.

Housing Provider's Certificate of Election of Adjustment of General Applicability to take and perfect the 2003 CPI-W of 2.9% was filed on June 1, 2004, 31 days after the date that Housing Provider was first eligible to take the adjustment. RX 201. Because the previous day, May 31, was a holiday, Housing Provider's certificate was filed within the required 30 day period. 14 DCMR 3912.2.

The 2006 rent adjustment was implemented on March 1, 2006, less than a year after the 2005 rent increase, which was also based on an increase in the rent ceiling arising out of a CPI-W increase which was implemented on April 1, 2005. The Housing Provider's implementation of consecutive CPI-W increases within less than a year implicates the provisions of the Rental Housing Act and the governing regulations concerning annual limitations on CPI-W rent increases. The Rental Housing Act provides that: "A housing provider may not implement an adjustment of general applicability . . . for a rental unit within 12 months of the effective date of the previous adjustment of general applicability" D.C. Official Code § 42-3502.06(d). The implementing regulations provide:

A housing provider may take and perfect a rent ceiling adjustment of general applicability only once in any twelve (12) month period, and a housing provider who elects to perfect a rent ceiling adjustment for a rental unit under § 206(b) of the Act shall not be eligible to take and perfect another such adjustment during the twelve (12) month period immediately following the date of perfection of the prior adjustment of general applicability.

14 DCMR 4206.3

The plain language of the statute and regulation applies only to the requirements for taking and perfecting an increase of general applicability. It does not prohibit a housing provider from implementing two increases that have been properly taken and perfected within less than twelve months. *See* D.C. Official Code § 42-3502.08(g) (“No adjustment in rent under this chapter may be implemented until a full 180 days have elapsed since any prior adjustment.”) *Sawyer*, 877 A.2d at 104, n. 5 (discussing the application of the annual adjustment of general applicability).

Housing Provider here complied with the requirements of the Rental Housing Act and the regulations in implementing the 2006 rent increase. The 2004 CPI-W increase that was implemented in 2006 was taken and perfected 12 months after Housing Provider took and perfected the 2003 CPI-W. RXs 200, 201. The Notice of Increase in Rent Charged, RX 218, contained the information required by the regulations.⁸ The Certificate of Election of Adjustment of General Applicability, RX 201, was timely filed. Tenant acknowledged in her testimony that copies of the certificate had been posted in the laundry and mail rooms of her building as required by 14 DCMR 4206.4 and 4101.6. Housing Provider filed a certificate with

⁸ A Notice of Increase in Rent Charged is required to state (a) amount of rent adjustment; (b) amount of adjusted rent; (c) date adjusted rent effective; (d) date and authorization for the rent ceiling adjustment taken and perfected; and (e) certify that the rental unit in substantial compliance with Housing Regulations. 14 DCMR 4205.4.

the RACD confirming service of the Notice of Increase in Rent Charged Tenant and the other tenants in the building and attaching a specimen copy of the Notice. RX 220. *See* 14 DCMR 4101.6, 4204.10, 4206.4. Accordingly, I find that Tenant has not proven that Housing Provider's March, 2006 rent increase was in violation of the Rental Housing Act or that Housing Provider failed to document the 2004 CPI-W rent ceiling increase properly with the RACD.

D. Tenant's Claim for a Rent Refund Due to Disability

Much of Ms. Spund's testimony and most of her exhibits related to her disability claim. Tenant argued that the Social Security Administration had determined that she was disabled as of November, 2003, PX 105, and sought a refund of all subsequent rent increases. In addition, Tenant sought a refund of the \$55 per month capital improvement surcharge, which totaled \$1,870.00 as of September, 2006. PX 111.

Although the Social Security Administration concluded that Ms. Spund was disabled as of November, 2003, Tenant did not seek a disability determination from the Department of Consumer and Regulatory Affairs until June 19, 2006. The Rent Administrator determined that she was disabled as of August 23, 2006. PX 111.

On May 5, 2006, Tenant wrote a letter to Housing Provider requesting exemption from the capital improvement surcharge. PX 111.⁹ On June 19, 2006, Housing Provider agreed that Tenant was eligible for exemption from the surcharge and proposed to reduce her rent to \$972 per month. Housing Provider also proposed to give Tenant a credit of \$588, presumably a partial

⁹ For reasons that were unexplained, the letter was typed on the letterhead of the District of Columbia Department of Consumer and Regulatory Affairs.

reimbursement of Tenant's past surcharge payments.¹⁰ PX 111. Tenant demanded a refund of all surcharge payments from December 2003 forward, totaling \$1,870. PX 111. Housing Provider's counsel wrote a letter protesting Tenant's demand to the Rent Administrator. RX 210. There is no record of any response from the Rent Administrator.

Tenant's claim for a rent refund with respect to the annual rent increases from 2004 through 2006 has no basis in the Rental Housing Act or its implementing regulations. The only exception to the Rental Housing Act's rent stabilization provisions concerning disabled tenants at the time Tenant filed her petition was a prohibition on the assessment of capital improvement surcharges on elderly or disabled tenants. D.C. Official Code § 42-3502.06(f)(1).¹¹ The Act specifically provided that this exception "shall not affect any increase in the rent charged for any rental unit regulated under this chapter." D.C. Official Code § 42-3502.06(f)(3). It follows that any legitimate CPI-W increase that Housing Provider implemented is not invalidated on account of Tenant's disability.

On the other hand, the Rental Housing Act provides that "a capital improvement increase in the rent charged as provided under § 45-3502.10 [prescribing the procedure for capital improvement petitions] shall not be assessed against any elderly or disabled tenant." D.C. Official Code § 42-3502.06(f)(1). The regulations implementing this provision say nothing

¹⁰ Housing Provider did not explain how the \$588 credit was computed.

¹¹ In June 2006 the District of Columbia Council passed the Rent Control Reform and Amendment Act of 2006, which amended the Rental Housing Act of 1985 to provide that permissible rent increases would be based on the present rent charged for a housing unit rather than the rent ceiling. *See* 53 D.C. Reg. 4489 (Jun. 23, 2006). The amendment changed the procedure under which a Housing Provider could implement an adjustment of general applicability and inserted a provision that limited the amount of increase that could be imposed on a tenant who was disabled to 5%. 42 D.C. Official Code § 3502.08(h)(2). The amendment was effective as of August 5, 2006, and therefore does not affect the Tenant's petition here. *See* 53 D.C. Reg. 6688 (Aug. 18, 2006).

about whether a disability exemption may be granted retroactively. *See* 14 DCMR 4210.46 – 4210.55. Following is the procedure by which a tenant may become eligible for an exemption on account of disability after a capital improvement petition has been approved:

No tenant shall qualify as an elderly or disabled tenant, unless found to be an elderly or disabled tenant by the Rent Administrator in accordance with § 4210.47 or § 4210.48; provided that:

. . . .

(c) If a tenant becomes eligible to make a claim for exemption from a capital improvement rent charge increase, after the increase is in effect, the tenant may file a claim in writing with the Rent Administrator stating the change in circumstances and the basis on which the tenant claims eligibility for the exemption. The tenant must serve the housing provider or the housing provider's representative with a copy of the claim of exemption in accordance with § 3911. If the housing provider does not contest the tenant's claim of exemption, the Rent Administrator shall determine whether to grant the exemption. If the housing provider contests the exemption, the Rent Administrator shall schedule a hearing

14 DCMR 4210.49

Although Tenant's amended claims contesting the application of the capital improvement surcharge was not filed directly with the Rent Administrator, it is clear that the preconditions for a hearing under the regulation have been satisfied. Tenant has claimed eligibility for an exemption and Housing Provider contests the application of the exemption that Tenant claims. It follows that it was appropriate to consider Tenant's capital improvement surcharge claim at the hearing.¹²

¹² As of October 1, 2006, the Office of Administrative Hearings has assumed jurisdiction of hearings for rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03(b-1).

The regulation makes clear that a tenant does not qualify for disabled status “unless found to be disabled by the Rent Administrator.” Moreover, the use of the future tense (“the Rent Administrator *shall determine whether to grant the exemption*”) implies that the determination of a disability exemption is prospective and not retroactive. I conclude, therefore, that Ms. Spund did not become eligible for disabled status, and the consequent exemption from the capital improvement surcharge, until her claim of exemption was approved by the Rent Administrator on August 23, 2006. PX 111. Ms. Spund is entitled to a reduction of \$55 in her rent as of September 2006 to the date of the hearing.

E. Tenant’s Award

If a Housing Provider fails to take and perfect a rent ceiling increase properly, a subsequent increase in rent resulting from that rent ceiling increase is illegal and must be refunded to the tenant. *Sawyer Prop. Mgmt. v. Mitchell*, TP 24,991 (May 29, 2002) at 14, *aff’d sub nom. Sawyer Prop. Mgmt. v. D.C. Rental Hous. Comm’n*, 877 A.2d 96 (2005). As of the date of the hearing, February 6, 2007, Tenant had paid the illegal April 1, 2004, rent increase of \$23 per month for 34.21 months, a total of \$786.83.¹³ She had paid the illegal April 1, 2005 rent increase of \$15 for 22.21 months, for a total of \$333.15. Accordingly, I award Tenant a rent refund of \$1,119.98, the total of the illegal rent that Tenant has paid.

Tenant did not present any evidence that the rent increases were imposed in bad faith or that Housing Provider knew it was violating the law. Therefore I will not impose treble damages. See D.C. Official Code § 42-3509.01(a); *Vicente v. Jackson*, TP 27,614 (RHC Sept.

¹³ Because the refund only runs to the date of the hearing, the refund for February 2006 is prorated. The decimal amount, 0.21, is 6/28, representing six of the 28 days in February.

19, 2005) at 12 (a finding of bad faith to justify treble damages requires “egregious conduct, dishonest intent, sinister motive, or a heedless disregard of duty,” citing *Quality Mgmt. v. D.C. Rental Hous. Comm'n*, 505 A.2d 73, 75 (D.C. 1986) and *Third Jones Corp. v. Young*, TP 20,300 (RHC Mar. 22, 1990)). There is also no evidence of willfulness on Housing Provider’s part, so I will not impose any fine. D.C. Official Code § 42-3509.01(b).

Tenant is also entitled to a refund for any sums she paid on account of Housing Provider’s capital improvement surcharge following the date that her disability was certified by the Rent Administrator, August 26, 2006. I therefore award Tenant a further refund of \$55 per month for the 5.21 months rent that she paid from September 2006 through the date of the hearing, for a total of \$286.55. Tenant’s total refund is \$1,406.53.¹⁴

In addition, the Rental Housing Act provides for a roll back of illegal rent increases. D.C. Official Code § 42-3509.01(a); *Sawyer v. Mitchell* at 2, 23 (affirming roll back imposed by hearing examiner). I therefore order Housing Provider to roll back Tenant’s rent as of March 1, 2007 to \$887 per month, so as to reduce the rent by the amount of the 2004 and 2005 rent increases, \$38 per month, and by the \$55 amount of the capital improvement surcharge.¹⁵

¹⁴ The refund assumes that Tenant continued to pay monthly rent of \$980 per month through the date of the hearing. The record shows that Tenant paid \$980 per month through September 2006 because she told Housing Provider she was paying that amount in her letter of September 19, 2006. PX 111. But it is unclear whether she continued to pay that amount after Housing Provider acknowledged her exemption from the capital improvement surcharge and offered to reduce her rent. The witnesses did not give testimony on this issue. The tenant ledger introduced into evidence by Tenant, PX 113, only goes through March, 2005. The rent history introduced into evidence by Housing Provider shows that Tenant was charged rent of \$980 per month as of May, 2006, but does not show any further adjustments. To the extent that Tenant made payments of less than \$980 per month through February, 2007, Housing Provider would be entitled to credit the reductions against the rent refund.

¹⁵ Any further rent increases after the date of the hearing should be based on this \$887 rent.

F. Interest

The Rental Housing Commission Rules implementing the Rental Housing Act provide for the award of simple interest on rent refunds at the interest rate used by the Superior Court of the District of Columbia from the date of the violation to the date of issuance of the decision. 14 DCMR 3826.1 – 3826.3; *Marshall v. District of Columbia Rental Hous. Comm'n*, 533 A.2d 1271, 1278 (D.C. 1987). Table 2 below computes the interest due on each month's overcharge at the six percent interest rate set for judgments of the Superior Court of the District of Columbia on the date of the hearing.

Table 2
Interest Chart
TP 28,643

Date of Violation May 1, 2004, through
Date of OAH Decision July 27, 2007

| A | B | C | D | E | F |
|----------------------|-----------------------|---------------------------------|-----------------------|-----------------------|--------------------|
| Dates of Overcharges | Amount of Overcharge | Months Held by Housing Provider | Monthly Interest Rate | Interest Factor (CxD) | Interest Due (BxE) |
| Apr. 2004 | \$23.00 | 39.87 ¹⁶ | .005 ¹⁷ | .066 | \$4.59 |
| May 2004 | \$23.00 | 38.87 | .005 | .066 | \$4.47 |
| June 2004 | \$23.00 | 37.87 | .005 | .066 | \$4.36 |
| July 2004 | \$23.00 | 36.87 | .005 | .066 | \$4.24 |
| Aug. 2004 | \$23.00 | 35.87 | .005 | .066 | \$4.13 |
| Sep. 2004 | \$23.00 | 34.87 | .005 | .066 | \$4.01 |
| Oct. 2004 | \$23.00 | 33.87 | .005 | .066 | \$3.90 |
| Nov. 2004 | \$23.00 | 32.87 | .005 | .066 | \$3.78 |
| Dec. 2004 | \$23.00 | 31.87 | .005 | .066 | \$3.67 |
| Jan. 2005 | \$23.00 | 30.87 | .005 | .066 | \$3.55 |
| Feb. 2005 | \$23.00 | 29.87 | .005 | .066 | \$3.44 |
| Mar. 2005 | \$23.00 | 28.87 | .005 | .066 | \$3.32 |
| Apr. 2005 | \$38.00 ¹⁸ | 27.87 | .005 | .066 | \$5.30 |
| May 2005 | \$38.00 | 26.87 | .005 | .066 | \$5.11 |
| June 2005 | \$38.00 | 25.87 | .005 | .066 | \$4.92 |
| July 2005 | \$38.00 | 24.87 | .005 | .066 | \$4.73 |
| Aug. 2005 | \$38.00 | 23.87 | .005 | .066 | \$4.54 |
| Sept. 2005 | \$38.00 | 22.87 | .005 | .066 | \$4.35 |
| Oct. 2005 | \$38.00 | 21.87 | .005 | .066 | \$4.16 |
| Nov. 2005 | \$38.00 | 20.87 | .005 | .066 | \$3.97 |
| Dec. 2005 | \$38.00 | 19.87 | .005 | .066 | \$3.78 |
| Jan. 2006 | \$38.00 | 18.87 | .005 | .066 | \$3.59 |

¹⁶ The months that the overcharge was held by Housing Provider is computed beginning in April 2004, the month of Tenant's rent increase, through the date of this decision, July 27, 2007. The portion attributable to July 2007 is prorated, $27/31 = .87$.

¹⁷ The monthly interest rate is the 6% annual interest rate on judgments of the Superior Court of the District of Columbia on the date of the hearing, February 6, 2007, divided by 12, or 0.005.

¹⁸ Beginning in April 2005, Housing Provider imposed an additional \$15 per month increase that I have found to be illegal, so Tenant began to pay \$38 per month in illegal rent charges.

| A | B | C | D | E | F |
|----------------------|-----------------------|---------------------------------|-----------------------|-----------------------|--------------------|
| Dates of Overcharges | Amount of Overcharge | Months Held by Housing Provider | Monthly Interest Rate | Interest Factor (CxD) | Interest Due (BxE) |
| Feb. 2006 | \$38.00 | 17.87 | .005 | .066 | \$3.40 |
| Mar. 2006 | \$38.00 | 16.87 | .005 | .066 | \$3.21 |
| Apr. 2006 | \$38.00 | 15.87 | .005 | .066 | \$3.02 |
| May 2006 | \$38.00 | 14.87 | .005 | .066 | \$2.83 |
| June 2006 | \$38.00 | 13.87 | .005 | .066 | \$2.65 |
| July 2006 | \$38.00 | 12.87 | .005 | .066 | \$2.45 |
| Aug. 2006 | \$38.00 | 11.87 | .005 | .066 | \$2.26 |
| Sep. 2006 | \$93.00 ¹⁹ | 10.87 | .005 | .066 | \$5.05 |
| Oct. 2006 | \$93.00 | 9.87 | .005 | .066 | \$4.59 |
| Nov. 2006 | \$93.00 | 8.87 | .005 | .066 | \$4.12 |
| Dec. 2006 | \$93.00 | 7.87 | .005 | .066 | \$3.66 |
| Jan. 2007 | \$93.00 | 6.87 | .005 | .066 | \$3.19 |
| Feb. 2007 | \$19.53 ²⁰ | 5.87 | .005 | .066 | \$.57 |
| Total | \$1,406.53 | | | | \$132.81 |

Tenant's total award is \$1,539.34, consisting of rent refunds totaling \$1,406.53, and interest of \$132.81 through the date of this decision.

III. Findings of Fact

1. From 1983 through the date of the hearing, Tenant, Lee Ann Spund, leased Apartment No. 706 at 2130 P Street, S.E., the housing accommodation. From 2003 through the date of the hearing the housing accommodation was managed by QDC Property Management, Inc., the Housing Provider.

¹⁹ I have found that Tenant's rent should not have been charged the \$55 per month capital improvement surcharge beginning in September, 2006.

²⁰ The February 2007 \$93.00 overcharge is prorated to the date of the hearing — $\$93 \times .21 = \19.53 .

2. In 1991 the building owner, 2130 P Street Associates, filed a capital improvement petition with the Rent Administrator, seeking a capital improvement surcharge of up to \$55 per month per tenant to cover the cost of capital improvements. The petition was approved by the hearing examiner but was challenged on appeal by the building tenant association. RX 206, RX 208. Tenant authorized the tenant association to act on her behalf in the dispute over the capital improvement surcharge. RX 207.

3. In 1998 Ms. Spund was badly burned in a fire and was hospitalized. Following the fire, and up to the date of the hearing, she suffered from depression and a variety of physical ailments. She was unable to work.

4. In December 2001, the tenant association entered into a settlement agreement with Housing Provider under which Housing Provider would implement the surcharge in two parts. Beginning on March 1, 2002, Housing Provider would impose a \$27 per month surcharge. The full \$55 per month surcharge would not begin until March 1, 2003. RX 208. Tenant approved the settlement agreement in writing. RX 209. The signature page approving the settlement confirmed that Tenant's rent ceiling as of January 1, 2002, was \$875 per month, not including the \$55 capital improvement petition surcharge, and that Tenant's 2002 rent increase would not exceed \$27 per month. RX 209. Tenant did not seek an exemption from the capital improvement surcharge on account of disability at that time.

5. On February 28, 2003, Housing Provider served Tenant with a Notice of Increase in Rent Charged increasing her rent from \$887 to \$915 effective April 1, 2003, a \$28 per month increase attributable to the second part of the capital improvement surcharge that was approved

by the Rent Administrator. RX 217. Housing Provider filed an affidavit of service of the notice with the Rent Administrator. RX 217.

6. In March 2004 Tenant applied for Social Security disability benefits and was diagnosed to have “major depression” by an examining physician, who noted that her prognosis was “poor.” Petitioner's Exhibit ("PX") 104. On August 16, 2004, the Social Security Administration informed Tenant that she was eligible to receive Supplemental Security Income payments for disability as of November 14, 2003. PX 105. Tenant did not apply to the Rent Administrator for a determination of disability status at that time. She continued to receive disability payments through the date of the hearing. PXs 104 – 110.

7. On February 27, 2004, Housing Provider served Tenant with a Notice of Increase in Rent Charged increasing her rent from \$915 to \$938 effective April 1, 2004, a \$23 per month increase attributed to a CPI-W increase authorized on May 1, 2002. Housing Provider filed an affidavit of service of the notice with the Rent Administrator. RX 217.

8. Housing Provider did not file a Certificate of Election of Adjustment of General Applicability for the CPI-W increase authorized on May 1, 2002, until October 8, 2002, more than 30 days after Housing Provider was first eligible to take the adjustment. RX 216.

9. On February 28, 2005, Housing Provider served Tenant with a Notice of Increase in Rent Charged increasing her rent from \$938 to \$953 effective April 1, 2005, a \$15 per month increase attributed to a CPI-W increase authorized on May 1, 1998. Housing Provider filed an affidavit of service of the notice with the Rent Administrator. RX 217.

10. Housing Provider did not file a Certificate of Election of Adjustment of General Applicability for the CPI-W increase authorized on May 1, 1998, until January 7, 1999, more than 30 days after Housing Provider was first eligible to take the adjustment. RX 214.

11. On January 26, 2006, Housing Provider served Tenant with a Notice of Increase in Rent Charged increasing her rent from \$953 to \$980 effective March 1, 2005, a \$27 per month increase attributed to a CPI-W increase authorized on May 1, 2004. Housing Provider filed an affidavit of service of the notice with the Rent Administrator. RX 220.

12. Housing Provider filed a Certificate of Election of Adjustment of General Applicability for the CPI-W increase authorized on May 1, 2004, on June 1, 2004, within 30 days after Housing Provider was first eligible to take the adjustment, allowing for the Memorial Day holiday.

13. On June 20 2006, Tenant filed a claim of exemption with the Rent Administrator seeking a disability determination. PX 111. The Rent Administrator determined that she was disabled as of August 23, 2006. PX 111.

14. On May 5, 2006, Tenant wrote a letter to Housing Provider requesting exemption from the capital improvement surcharge. PX 111. On June 19, 2006, Housing Provider agreed that Tenant was eligible for exemption from the surcharge and proposed to reduce her rent to \$972 per month. Housing Provider also offered to give Tenant a credit of \$588, presumably a partial reimbursement of Tenant's past surcharge payments. PX 111. Tenant demanded a refund of all surcharge payments from December 2003 forward, totaling \$1,870.

15. Although Housing Provider offered to reduce Tenant's rent to \$972 per month, Tenant asserted in a letter of September 19, 2006 to Housing Provider that she was still paying \$980 per month. PX 111. There is no evidence that Housing Provider reduced Tenant's rent prior to the date of the hearing or applied any credits to her account.

16. On June 6, 2006, Tenant filed TP 28,643 with the Rent Administrator. The petition alleged that: (1) The rent increase was larger than the amount of increase allowed by the Rental Housing Act of 1985. (2) Housing Provider failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division. (3) The rent being charged exceeded the legally calculated rent ceiling for the unit. Specifically, Tenant noted in the petition that: (1) the May 1998 rent increase was \$10 over the legal limit; it was \$25 when it should have been \$15; and (2) there was no rent ceiling increase on record at the RACD for the May 2004 rent increase.

17. On December 8, 2006, Tenant moved to amend her tenant petition to add the following issues: (1) Tenant should not be assessed the capital improvement surcharge because she was disabled; (2) the rent increases from 2003 to 2006 were improper due to incorrect calculation of the rent ceiling; (3) the RACD had no record of the May 2004 rent increase. Tenant's motion was granted.

IV. Conclusions of Law

1. This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 41-3501.01 – 3509.07, the District of Columbia Administrative Procedure Act ("DCAPA"), D.C. Official Code §§ 2-501 – 510, the District of Columbia Municipal Regulations (DCMR), 1 DCMR 2800 – 2899, 1 DCMR 2920 – 2941, and 14 DCMR 4100 – 4399. As of October 1,

2006, the Office of Administrative Hearings has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03.

2. Tenant's claim that her April 2003 rent increase was improper is barred under the Rental Housing Act because the rent increase took place more than three years before the date Tenant file her tenant petition. D.C. Official Code § 42-3502.06(e); *Majerle Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 866 A.2d 41, 47 (D.C. 2002); *Kennedy v. D.C. Rental Hous. Comm'n*, 709 A.2d 94, 97 (D.C. 1998).

3. Housing Provider's April 2004 rent increase implemented a rent ceiling increase that was not properly taken and perfected by Housing Provider. Accordingly, the increase is illegal. *Sawyer Prop. Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 104 (2005).

4. Housing Provider's April 2005 rent increase implemented a rent ceiling increase that was not properly taken and perfected by Housing Provider. Accordingly, the increase is illegal. *Sawyer Prop. Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 104 (2005).

5. Housing Provider's March 2006 rent increase increase implemented a rent ceiling increase that was properly taken and perfected.

6. Tenant is entitled to an exemption from the capital improvement surcharge applicable to her rental unit beginning on the date that she obtained an exemption from the RACD, August 26, 2006. Tenant is not entitled to any refund of payments she made prior to that date.

7. Tenant is entitled to refunds of her payments of the 2004 and 2005 rent increases and her exemption from the capital improvement surcharge in the total amount of \$1,406.53.

8. Tenant is entitled to interest on her refunds at 6% per annum through the date of this decision for each monthly payment of the illegal rent increases through the date of the hearing. Tenant is awarded interest of \$132.81 for a total award of \$1,539.34.

9. Tenant is entitled to a roll back of her rent to \$885 as of the date of the hearing,. D.C. Official Code § 42-3509.01.

V. Order

Accordingly, it is this **27th** day of **July, 2007**,

ORDERED that Housing Provider QDC Property Management Inc. pay Tenant Lee Ann Spund **ONE THOUSAND FIVE HUNDRED AND THIRTY-NINE DOLLARS AND THIRTY-FOUR CENTS (\$1,539.34)**; and it is further

ORDERED that Tenant's rent is rolled back to **EIGHT HUNDRED AND EIGHTY-SEVEN DOLLARS PER MONTH (\$887)** as of March, 2007; and it is further

ORDERED that either party may move for reconsideration of this Final Order within ten business days under OAH Rule 2937, 1 DCMR 2937; and it is further

ORDERED that the appeal rights of any party aggrieved by this Order are stated below.

/s/
Nicholas H. Cobbs
Administrative Law Judge

APPENDIX**Exhibits in Evidence**

| Exhibit No. | Description |
|--------------------|---|
| PX 100 | Letter from D.C. Rehabilitation Services Administration to Ms. Spund dated March 26, 2004 |
| PX 101 | Letter from D.C. Rehabilitation Services Administration to Ms. Spund dated March 26, 2004 |
| PX 102 | Letter from D.C. Rehabilitation Services Administration to Ms. Spund dated March 26, 2004 |
| PX 103 | Activities of Daily Living Questionnaire |
| PX 104 | Letter from D.C. Rehabilitation Services Administration to Dr. Keisling dated March 22, 2004, and Attached Questionnaires |
| PX 105 | Social Security Administration Notice of Award dated August 16, 2004 |
| PX 106 | Social Security Administration Notice of Change in Payment dated December 21, 2004 |
| PX 107 | Letter from Social Security Administration to Ms. Spund dated September 8, 2004 |
| PX 108 | Social Security Administration Notice of Change in Payment dated November 28, 2004 |
| PX 109 | Social Security Administration Notice of Change in Payment dated November 26, 2006 |
| PX 110 | Letters from Social Security Administration to Ms. Spund dated October 24, 2006, and attached payment information |
| PX 111 | Letter from Ms. Spund to QDC Property Management, Inc. dated May 5, 2006, re disability and attached correspondence and exemption form |
| PX 112 | Certification of Records from the Rental Accommodations and Conversion Division dated December 8, 2006, and attached records |
| PX 113 | Tenant Ledger for Ms. Spund |
| PX 114 | Letter from QDC Property Management, Inc. to Ms. Spund dated March 1, 2002, and attached correspondence and tenant notices |
| PX 115 | Postal Money Order Receipt dated March 3, 2006 |
| PX 116 | Social Security Administration Notice of Change in Payment dated November 27, 2005 |
| PX 117 | Notices of Increase in Rent Charged and of Increase in Rent Ceiling, dated February 28, 2005, April 27, 2005, January 26, 2006, May 9, 2006 |
| PX 118 | Application for Elderly or Disabled Status dated October 6, 2006 |
| RX 200 | Certificate of Election of Adjustment of General Applicability filed May 30, 2003 |
| RX 201 | Certificate of Election of Adjustment of General Applicability filed June 1, 2004 |
| RX 202 | Certificate of Election of Adjustment of General Applicability filed May 10, 2005 |
| RX 203 | Certificate of Election of Adjustment of General Applicability filed January 7, 1999 |

| Exhibit No. | Description |
|--------------------|--|
| RX 204 | Certificate of Election of Adjustment of General Applicability filed May 10, 2005 |
| RX 205 | Certificate of Election of Adjustment of General Applicability filed May 10, 2006 and attached Affidavit Final Order Service for Notice of Rent Ceiling Adjustment |
| RX 206 | Decision and Order dated October 23, 1991, C/I No. 20,601. |
| RX 207 | Authorization of Representation dated May 6, 2001 |
| RX 208 | Settlement Agreement |
| RX 209 | Signature Page dated January 17, 2002 |
| RX 210 | Letter from Vincent Mark Policy, Esq. to Keith Anderson, Acting Rent Administrator, dated October 11, 2006 |
| RX 211 | Letter from Vincent Mark Policy, Esq. to Ms. Spund, dated October 20, 2006 |
| RX 212 | Email from Melanie A. Washington to Keith Anderson dated October 13, 2006 and attached letter |
| RX 213 | Notice of Increase of General Applicability dated December 23, 1997 |
| RX 214 | Rent Administrator Certification of Records dated January 30, 2007 |
| RX 215 | Certificate of Election of Adjustment of General Applicability filed June 1, 2004 |
| RX 216 | Certificate of Election of Adjustment of General Applicability filed October 8, 2002 |
| RX 217 | Affidavit of Alison Law and attached tenant notices |
| RX 218 | Notice of Increase in Rent Charged dated January 26, 2006 |
| RX 219 | Affidavit of Service of Notice of Rent Adjustment filed March 30, 2005 |
| RX 220 | Affidavit of Service for Notice of Rent Charged Adjustment filed January 30, 2006 |
| RX 221 | Rent History |